

constitutionally sufficient. In the classic justification for coercive imprisonment, contemnors "carry the keys of their prison in their own pockets." *In re Nevill*, 117 F. at 461 (quoted in *Johansen*, 491 P.2d at 765). CSED believes that obligors like Beans carry the keys to their ears in their own pockets. Since we are only concerned with the keys to a car, not to a prison cell, it is enough that obligors can have a judge review their claims that they do not in fact possess those keys.

VI. CONCLUSION

We AFFIRM only to the extent that we find AS 23.27.246(i) to be ineffective to prevent a litigant from seeking judicial relief based on inability to pay. Otherwise, we REVERSE and REMAND for further proceedings consistent with this opinion.



**PIQUIN MANAGEMENT
CORPORATION,**
Appellant,

v.

Jesse A. REEVES, Appellee.

No. S-8016.

Supreme Court of Alaska.

Nov. 6, 1998.

Employee brought action against employer for overtime wages. The Superior Court, Third Judicial District, Anchorage, Peter A. Michalski, J., awarded damages. Employer appealed. The Supreme Court, Bryner, J., held that in calculating proper measure of employee's overtime damages, trial court erred in treating employee's entire 60-week salary as straighttime pay.

Reversed.

1. Labor Relations § 1541

To determine extent of a worker's overtime damages in a case involving an Alaska Wage and Hour Act (AWHA) overtime claim, court must answer two distinct questions: how much pay worker has earned, and how much employer still owes. AS 23.10.060 et seq.

2. Labor Relations § 1541

In calculating proper measure of employee's overtime damages, trial court erred in treating employee's entire 60-week salary as straighttime pay, since, due to his alternating work schedule, employee worked only half of weeks for which he received annual salary, and counting employee's entire 60 weeks of salary as pay for only 30 weeks of actual straighttime work would violate overtime compensation regulation's mandate to consider each week of his salary as week of straighttime pay. Alaska Admin. Code title 8, § 15.100(a)(2).

3. Labor Relations § 1271

Overtime regulations require salaried worker's award for unpaid overtime compensation to be computed by: (1) figuring worker's salary on weekly basis; (2) assuming that week of salary represents pay for week of straighttime work; (3) using regular rate of hourly pay derived from this assumption as basis for determining worker's total compensation for all hours actually worked; and (4) deducting from this amount all amounts of salary actually paid. Alaska Admin. Code title 8, § 15.100(a), (a)(2).

4. Labor Relations § 1271

A court converting annual salary to regular rate of hourly pay under overtime regulation must use regular rate as basis for computing total earnings for all hours actually worked, and all salary actually paid must be deducted from these total earnings; difference will reflect award necessary to ensure that straighttime, overtime, and total compensation are all based on applicable regular rate of pay. Alaska Admin. Code title 8, § 15.100(a), (a)(2).

Kenneth P. Eggers, Todd J. Timmerman
Groh Eggers, LLC, for Appellant.

Richard W. Maki, David H.
Tindall Bennett & Shoup
Pellee.

Opinion No. 5088, issued
was withdrawn. Opinion No.
issued in its place on November

Before MATTHEWS, C.J.,
COMPTON, EASTAUGH, FA
BRYNER, J.J.

OPINION

BRYNER, Justice.

Jesse A. Reeves worked
Piquin Management Corpora
salary of \$57,876. He works
on two-weeks-off schedule
ninety-eight-hour weeks while
received no overtime pay.
PMC for overtime wages an
determine Reeves's damages,
converted his salary to a regu
lar rate and used this rate as a basis for
overtime earnings. Without
straighttime or total wages
basis, the court awarded Re
amount of his overtime earni
Because this award pays R
regular hourly rate for his
time work, we reverse.

I. FACTS AND PROCEEDINGS

PMC operates a waste dis
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PMC initially placed Ree
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After several months, PMC
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Exhibit A page 1 of 7

ons 1541

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ons 1541

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ons 1271

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(2).

... gers, Todd J. Timmerman
C, for Appellant.

Richard W. Maki, David H. Shoup, Part-
low Tindal Bennett & Shoup, P.C., for Ap-
pellee.

Opinion No. 5038, issued on Oct. 9, 1998,
was withdrawn. Opinion No. 5044 was is-
sued in its place on November 6, 1998.

Before MATTHEWS, C.J., and
COMPTON, EASTAUGH, FABE and
BRYNER, JJ.

OPINION

BRYNER, Justice.

Jesse A. Reeves worked sixty weeks for
Piquin Management Company at an annual
salary of \$57,876. He worked a two-weeks-
on-two-weeks-off schedule and averaged
ninety-eight-hour weeks while on the job, but
received no overtime pay. Reeves sued
PMC for overtime wages and won. To de-
termine Reeves's damages, the trial court
converted his salary to a regular hourly rate.
It used this rate as a basis for computing his
overtime earnings. Without computing his
straighttime or total wages on the same ba-
sis, the court awarded Reeves the entire
amount of his overtime earnings as damages.
Because this award pays Reeves twice his
regular hourly rate for his actual straight-
time work, we reverse.

FACTS AND PROCEEDINGS

PMC operates a waste disposal facility for
the North Slope Borough. Reeves worked
there as a PMC employee for about two
years, regularly spending two weeks on the
job and two weeks off; when on the job, he
worked seven days a week and at least
twelve hours a day.

PMC initially placed Reeves in a non-ex-
empt position and paid him eighteen dollars
per hour for straighttime work and twenty-
seven dollars per hour for overtime work.
After several months, PMC promoted Reeves
to the newly created position of operations
supervisor, which it considered to be exempt
from overtime compensation. Reeves ac-
cepted the job at an annual salary of \$57,876.

Under AS 23.10.060(b), workers must be paid
overtime wages at one and one-half times their
regular rate of pay for all hours in excess of 8 per
day or 40 per week; hours worked up to 8 per
day or 40 per week are straighttime.

Reeves's straighttime hours, overtime hours,
and total work hours are computed as follows:

PMC gave Reeves no written employment
contract, but he understood that he would
continue to work seven-day workweeks on a
schedule of two weeks on and two weeks off
and that his normal workday would remain
approximately twelve hours.

Reeves stayed in the operations supervisor
position for sixty weeks. Because of his
alternating work schedule, he actually
worked thirty of those weeks. During this
sixty-week period, his annual salary of \$57-
876 yielded him total pay of \$66,780. After
sixty weeks, PMC moved Reeves to another
position. Less than four months later, it laid
him off.

Reeves sued PMC, claiming that the com-
pany had improperly classified him as an
exempt employee during his stint as opera-
tions supervisor and that he was entitled to
overtime pay for his sixty weeks in that
position.

At a bench trial before Superior Court
Judge Peter A. Michalski, the parties litigat-
ed whether Reeves was properly classified as
an exempt employee while he was PMC's
operations supervisor, how many hours per
week he worked, and how much overtime
compensation PMC owed him. The court
found that PMC had improperly classified
Reeves as exempt. It also found that, in his
sixty weeks as operations supervisor, Reeves
had worked thirty weeks, with each work-
week consisting of seven working days, each
workday averaging fourteen hours.

The court next calculated Reeves's unpaid
overtime wages. Deducting forty hours of
straighttime work from Reeves's average
ninety-eight-hour workweek, the court found
that Reeves had worked fifty-eight hours of
overtime each workweek. This gave Reeves
2940 total hours, with 1200 at straighttime
pay and 1740 at overtime pay.¹

Reeves was entitled to his "regular rate of
pay" for his straighttime hours and to one
and one-half times his regular rate for his

30 workweeks × 40 straighttime hours per week
= 1200 straighttime hours; 30 workweeks × 58
overtime hours per week = 1740 overtime hours.
1200 straighttime hours + 1740 overtime hours
= 2940 total hours.

overtime hours.³ To compute Reeves's regular rate of pay, the trial court treated his \$57,876 annual salary as straighttime wages for fifty-two weeks of forty hours per week. This resulted in a regular rate of \$27.83 per hour; multiplied by one and one-half, the regular rate resulted in an overtime rate of \$41.74 per hour.⁴ Multiplying this hourly overtime rate by the 1740 overtime hours Reeves worked during his sixty weeks as operations supervisor, the court calculated his overtime earnings to be \$72,627.60.

The court considered this full amount of overtime earnings to be unpaid overtime wages, awarding them to Reeves as his overtime damages; adding an equivalent amount for liquidated damages,⁵ the court calculated Reeves's total damages (excluding prejudgment interest, costs, and attorney's fees) to be \$145,255.20. PMC appeals.

II. THE TRIAL COURT ERRED IN CONCLUDING THAT PMC OWED REEVES THE FULL AMOUNT OF HIS OVERTIME EARNINGS.

A. The Applicable Legal Framework

[1] To determine the extent of a worker's overtime damages in a case involving an Alaska Wage and Hour Act (AWHA) overtime claim, the court must answer two distinct questions: how much pay the worker has earned, and how much the employer still owes. At issue in this case is how these questions should be answered when the claimant has been paid an annual salary rather

than an hourly wage.⁶ The AWHA requires that they be answered by using the worker's regular rate of pay: "If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid."⁷

But the AWHA does not itself define what "regular rate of pay" means for a worker who, like Reeves, receives an annual salary instead of an hourly wage. Title 8, section 15.100(a) of the Alaska Administrative Code (AAC) addresses this issue. It provides that for purposes of computing overtime compensation, all salary must be converted to an hourly rate figured on a weekly basis:

(a) An employee's regular rate is the basis for computing overtime. The regular rate is an hourly rate figured on a weekly basis. An employee need not actually be hired at an hourly rate. . . . However, the applicable compensation basis must be converted to an hourly rate when determining the regular rate for computing overtime compensation.⁸

Two subparagraphs of this regulation further define the methods for converting salary to regular rate of pay. The first allows a salaried employee's regular rate of pay to be set by employment contract, but only if the contract clearly spells out the expectations of the employer and worker, and only if actual practice conforms to those expectations:

held this particular regulation to be "quasi-legislative." *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998, 1004 (Alaska 1984), and have further held that "administrative regulations which are legislative in character are interpreted using the same principles applicable to statutes." *State Dep't of Highways v. Green*, 585 P.2d 595, 603 n. 24 (Alaska 1978). We interpret statutes *de novo*. See *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912 n. 1 (Alaska 1996); *Inter v. Otis Eng'g Corp.*, 757 P.2d 50, 53 n. 2 (Alaska 1988). In interpreting a statute or regulation, we will adopt the most persuasive rule of law in light of precedent, reason, and policy. See *Boone v. Gibson*, 920 P.2d 746, 748 (Alaska 1996).

6. AS 23.10.060(b). This provision applies to all employment contracts. See AS 23.10.060(c).

7. 8 AAC 15.100(a).

2. See *supra* note 1.

3. \$57,876 annual salary ÷ 52 weeks = \$1113 weekly salary. \$1113 weekly salary × 40 straighttime weekly hours = \$27.83 per hour regular rate of pay. \$27.83 per hour regular rate × 1.5 = \$41.74 per hour overtime rate of pay.

4. Under the version of AS 23.10.110(a) that applied when Reeves worked for PMC, an employer who failed to pay overtime automatically became liable for liquidated damages in an amount equal to the unpaid overtime compensation. The statute has recently been amended to allow an exception from liquidated damages for employers who establish that they acted in good faith. See ch. 37, §§ 1, 3, SLA 1995.

5. This issue involves the interpretation of 8 Alaska Administrative Code (AAC) 15.100. We have

(1) The employment contract must specify the specific number of hours an employee is expected to work each week. The contract must specify the regular hourly rate of pay and the salary to be paid and the hours worked. Changes to the pay of a salaried employee must comply with the provisions of AS 23.05.160.⁹

The second subparagraph of the first; it requires the presence of an employment contract with subparagraph (a)(1). Salary must be deemed computed on a forty-hour week of eight-hour days.

(2) If a contract fails to specify the number of daily and weekly hours in which the salary is intended to be paid, or if the actual hours worked from the hours specified in the contract for an eight-hour workweek, and overtime shall be computed on that basis.¹⁰

This is the provision that the trial court relied on to calculate Reeves's overtime award.

B. The Parties' Arguments

On appeal, PMC does not dispute that the superior court correctly applied AS 23.100(a)(2) to convert Reeves's annual salary to a regular hourly rate of pay. PMC argues that the court correctly determined, on appeal, how much overtime pay Reeves is entitled to. PMC questions the court's conclusion that Reeves's earned overtime should be treated as being unpaid overtime wages. PMC distinguishes between the total overtime wages earned on the one hand and the total amount of overtime damages on the other. PMC argues that 8 AAC 15.100(a)(2) requires the court to compute overtime earnings by determining the ultimate

8. 8 AAC 15.100(a)(1).

9. 8 AAC 15.100(a)(2).

10. 8 AAC 15.110(a).

11. See *supra* note 3. Reeves is a fulltime employee of PMC.